91-1173

No._____

Supreme Court, U.S.
FILED
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1991

CALVIN J. SMITH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

David H. Williams
MORRIS, JAMES,
HITCHENS & WILLIAMS
222 Delaware Avenue
P.O. Box 2306
Wilmington, DE 19899
(302) 888-6800
Counsel of Record for Petitioner

Francis J. Jones, Jr.
MORRIS, JAMES,
HITCHENS & WILLIAMS
222 Delaware Avenue
P.O. Box 2306
Wilmington, DE 19899
(302) 888-6800

January 15, 1992

PACKARD PRESS / LEGAL DIVISION, 1617 JFK BOULEVARD, PHILA., PA. 19103 (215) 563-9000

QUESTION PRESENTED

Was the court of appeals correct in holding that, in a prosecution under 21 *U.S.C.* §845a(a) ("the Schoolyard Statute"), the government does not have the burden of proving beyond a reasonable doubt, through expert testimony, that the sale or distribution of the controlled substance occurred within 1,000 feet of the school?

LIST OF PARTIES

The parties to the proceeding below were petitioner Calvin J. Smith ("Smith") and respondent the United States of America ("the Government").

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

OPINIONS BELOW

The opinion of the Court of Appeals for the Third Circuit is unpublished and is annexed hereto as Appendix A (A-1).

The judgment of the Court of Appeals for the Third Circuit is unreported and is annexed hereto as Appendix B (A-9).

The judgment of the United States District Court for the District of Delaware (Longobardi, C.J.) is unreported and is annexed hereto as Appendix C (A-11).

JURISDICTION

On September 11, 1990, the petitioner, Calvin J. Smith ("Smith"), was indicted on a two count indictment charging him with knowing distribution of cocaine base in violation of 21 *U.S.C.* §§841(a)(1) and (b)(1)(c) and knowing distribution of cocaine base within 1,000 feet of a public elementary school in violation of

21 *U.S.C.* §§841(a)(1) and (b)(1)(c) and 845a. The trial of Smith's case went forward in the United States District Court for the District of Delaware on January 7 and 8, 1991. Smith was convicted on both counts of the indictment.

On April 24, 1991, the district court entered judgment against Smith. Smith filed his Notice of Appeal to the Court of Appeals for the Third Circuit on May 1, 1991.

On October 18, 1991, the court of appeals entered a decision and judgment affirming Smith's conviction. The court of appeals held that the district court did not err in denying Smith's motion to dismiss based on the argument that the unavailability of a government witness violated Smith's rights under the Confrontation Clause of the Sixth Amendment. The court of appeals further held that the district court did not err in denying Smith's motion for a directed verdict based on the Government's failure to prove beyond a reasonable doubt, with expert testimony, that the sale of crack cocaine occurred within 1,000 feet of the school, and it is this portion of the court's judgment from which certiorari is being sought. No petition for rehearing was filed.

The jurisdiction of this Court to review the judgment of the court of appeals is invoked under 28 *U.S.C.* §1254(1).

STATUTE INVOLVED

21 *U.S.C.* §845a Distribution or manufacturing in or near schools and colleges.

(a) Penalty

> Any person who violates section 841(a)(1) or section 856 of this title by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school

or a public or private college, junior college, or university, or a playground, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, is (except as provided in subsection (b) of this section) subject to (1) twice the maximum punishment authorized by section 841(b) of this title; and (2) at least twice any term of supervised release authorized by section 841(b) of this title for a first offense. A fine up to twice that authorized by section 841(b) of this title may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a person shall be sentenced under this subsection to a term of imprisonment of not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.

STATEMENT OF THE CASE

In August of 1990, the Bridgeville Police Department was conducting an investigation of the sale of cocaine base, or crack cocaine, near the Woodbridge Early Childhood Education Center ("the Woodbridge School"). (App. 39-40).[1] The Woodbridge School is a public elementary school located in Bridgeville, a small town in southern Delaware. (App. 28, 39-40).

The investigation was lead by Chief Handley J. Orr of the Bridgeville Police Department. (App. 39-40). In order to obtain information concerning possible criminal activity and to apprehend suspects, Chief Orr employed the services of a confidential informant, Queedee Swan. (App. 39-43, 10-11).

---

1. The following abbreviation will be used throughout this Brief: Joint Appendix at page _____ = "App. _____." The appendix references are to the joint appendix filed by the petitioner and the respondent in the court of appeals.

On the evening of August 7, 1990, at approximately 9:50 p.m., Chief Orr brought Swan to the Woodbridge School in order for Swan to attempt to make a "buy". (App. 14-15). Prior to entering the school building, Chief Orr frisked Swan and gave him $20.00 in marked money to purchase crack cocaine. (App. 43-44, 51-52). Chief Orr than went inside the school, and Swan stood on the sidewalk in front of the school, in between a mailbox and a street light. (App. 16-18). Chief Orr observed Swan from a school window. (App. 45-48).

Swan was standing in front of the school for approximately 15 minutes when he was approached by an individual. (App. 44). Government witnesses Chief Orr and Swan both identified this individual as Calvin Smith. (App. 49, 13-14). The individual identified as Smith asked Swan if he was looking for anything, and Swan responded that he wanted a twenty-cent piece of cocaine. (App. 18-19). The individual then removed from his sock a packet containing several pieces of crack cocaine. (*Id.*). Swan took a piece of crack cocaine, put it in the brim of his hat, and gave the individual $20.00. (App. 19-21). After the transaction was completed, Swan went to the back of the school, where Chief Orr was waiting for him. (App. 22-23). Chief Orr frisked Swan, and obtained the piece of crack cocaine. (App. 23, 55).

On September 11, 1990, Smith was indicted on a two count federal indictment charging him with knowing distribution of cocaine base in violation of 21 *U.S.C.* §§841(a)(1) and (b)(1)(c) and knowing distribution of cocaine base within 1,000 feet of a public elementary school in violation of 21 *U.S.C.* §§841(a)(1) and (b)(1)(c) and 845a. Smith was arrested on October 3, 1990.

The trial of Smith's case took place in the United States District Court for the District of Delaware on January 7 and 8, 1991. During the presentation of its case, the Government offered the testimony of Charles D. Murphy, Jr., a professional land surveyor. (App.

60-74). Murphy testified that the *arrest* of Smith occurred within 1,000 feet of the property line of the Woodbridge School. (App. 63-64, 66, 73). Murphy stated that his testimony was based on information received from Chief Orr. (App. 63-64). After the conclusion of the Government's case, Smith moved for a directed verdict on the basis that the Government failed to present evidence on an essential element of its case. (App. 68). The Government did not present expert testimony that the alleged *transaction* occurred within 1,000 feet of the school's property line. (App. 68-69). The Court denied Smith's motion. (App. 71).

Smith was convicted of both counts of the indictment. He was sentenced and judgment was entered against him on April 24, 1991. He filed a Notice of Appeal on May 1, 1991. The court of appeals entered a judgment and opinion affirming his conviction on October 18, 1991.

REASONS FOR GRANTING THE WRIT

I. The Court of Appeals' Decision that the Government Does Not Have to Prove, Through Expert Testimony, that the Transaction Occurred Within 1,000 Feet of the School Contravenes the Due Process Requirement that the Government Must Prove Beyond a Reasonable Doubt Each Essential Element of the Crime Charged

The court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court.

Smith was convicted of knowing distribution of crack cocaine within 1,000 feet of an elementary school in violation of 21 *U.S.C.* §845a(a) ("the Schoolyard Statute"). The Schoolyard Statute provides that any individual who distributes drugs within 1,000 feet of an elementary or secondary school is subject to double penalties for violation of the basic prohibition on the distribution of drugs.

The Due Process Clause protects a criminal defendant against conviction except upon proof beyond a reasonable doubt of each fact necessary to constitute the crime charged. *In Re Winship,* 397 U.S. 358, 364 (1970). In short, the Government has the burden of proving every essential element of a crime beyond a reasonable doubt. *United States v. Campa,* 679 F.2d 1006, 1012 (3d Cir. 1982); *United States v. Arias,* 575 F.2d 253, 254 (9th Cir.), *cert. denied,* 439 U.S. 868 (1978).

An essential element of the Schoolyard Statute is that the sale or distribution of the controlled substance must have occurred within 1,000 feet of the school. *See, e.g., United States v. Watson,* 887 F.2d 980 (9th Cir. 1989). The Government failed to present expert testimony that the transaction allegedly involving Smith occurred within 1,000 feet of the Woodbridge School. The Government, therefore, did not discharge its burden of proving beyond a reasonable doubt an essential element of the crime charged. *Campa,* 679 F.2d at 1012. This failure of proof constituted a violation of Smith's due process rights. *See In Re Winship,* 397 U.S. at 364.

A number of circuit court cases concerning convictions under the Schoolyard Statute have addressed the adequacy of proof presented regarding the proximity of the transaction to the school. These cases articulate two basic requirements with respect to the Government's burden of proof. First, the Government must present evidence or testimony concerning the measurement of the distance between the two relevant points. *See, e.g., Watson,* 887 F.2d at 980. In addition, at least two circuit court cases suggest that the distance between the two points must be established by expert testimony. For example, in *Watson,* 887 F.2d at 980, the Government presented expert testimony, based upon measurements, that the distance between the property line of the school and the boundary line closest to the school of the property on which the transaction took place was less than 1,000 feet. Similarly, in *United States v. Brookins,*

919 F.2d 281, 284 (5th Cir. 1990), a city engineer located the school property for the jury on an official city map and testified that the school property was within 1,000 feet of the convenience store where the drug transaction occurred.

At Smith's trial, the Government presented the expert testimony of Charles Murphy, a professional land surveyor. (App. 61-62). Murphy testified as to the boundary line of the property on which the Woodbridge School was located. (App. 62-63). However, Murphy's testimony did not satisfy the second requirement of the provision of the Schoolyard Statute concerning the proximity of the transaction to school property. Murphy did not testify that the alleged *sale* occurred within 1,000 feet of school property; rather, he testified that the *arrest* of Calvin Smith occurred within the required distance. (App. 64). Thus, the Government failed to present expert testimony that the alleged transaction occurred within the required distance. *See, e.g., Watson,* 887 F.2d at 980.

The requirement that the distance measured must be from the school property line to the point of the sale or transaction is implicit in the relevant cases. In *Brookins,* 919 F.2d at 283, the Government presented evidence that the convenience store, at which the sales of crack cocaine took place, was within 1,000 feet of an elementary school. In *Watson,* 887 F.2d at 980, an expert testified that the sales of marijuana occurred within 1,000 feet of the school. In *United States v. Lewin,* 900 F.2d 145, 148 (8th Cir. 1990), evidence was presented that the defendant was involved in the distribution of crack within 1,000 feet of school property.

The Government did not meet this fundamental requirement of proving, through expert evidence or expert testimony, that the sale, distribution or transaction occurred within the prescribed distance. Rather, the expert presented by the Government testified that his survey team measured the distance from the property on which the Woodbridge School was located to the point of

Calvin Smith's arrest. (App. 73). There was no arrest contemporaneous with the alleged transaction; Smith was not arrested until October 3, 1990. Therefore, the Government failed to prove beyond a reasonable doubt that the drug transaction, allegedly involving Smith, occurred within 1,000 feet of the Woodbridge School.

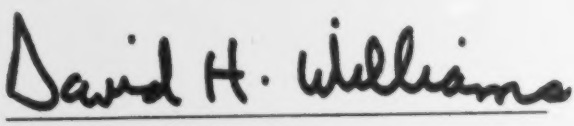
The circuit cases which are more protective of a criminal defendant's due process rights suggest that, in order to prove that the 1,000 feet requirement was met, the Government should have presented competent expert testimony. *See, e.g., Brookins,* 919 F.2d at 284. To the extent that the Government sought to prove, without the benefit of expert testimony, that this requirement was met, it failed to meet its burden of proof. Because the Government failed to satisfy its burden of proof on this essential element of the charge against Smith, the court of appeals should have reversed Smith's conviction. *Id.*

The decision of the court of appeals is inconsistent with the due process protections afforded a criminal defendant, and, for this reason, certiorari should be granted.

CONCLUSION

For all of the above reasons, this petition for certiorari should be granted.

Respectfully submitted,



David H. Williams
MORRIS, JAMES,
HITCHENS & WILLIAMS
222 Delaware Avenue
P.O. Box 2306
Wilmington, DE 19899
(302) 888-6800
Counsel of Record for Petitioner

Francis J. Jones, Jr.
MORRIS, JAMES,
HITCHENS & WILLIAMS
222 Delaware Avenue
P.O. Box 2306
Wilmington, DE 19899
(302) 888-6800

January 15, 1992

APPENDIX

APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 91-3256

UNITED STATES OF AMERICA

v.

CALVIN J. SMITH,

Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE
(D.C. Criminal No. 90-00090)
District Judge: Hon. Joseph J. Longobardi

Submitted Under Third Circuit Rule 12(6)
On October 10, 1991

Before: MANSMANN, NYGAARD and SEITZ,
Circuit Judges
(Opinion Filed: October 18, 1991)

MEMORANDUM OPINION

NYGAARD, *Circuit Judge*

Appellant Calvin J. Smith was indicted and convicted on two counts: distribution of crack cocaine in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(c); and knowing distribution of crack cocaine within 1,000 feet of an elementary school in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(c), and 845a. Smith's appeal

alleges two errors. He claims the district court erred by denying his motion for judgment of acquittal made at the close of the Government's case. He also claims it was reversible error for the trial court to deny his motion to dismiss the charges against him when, allegedly, the Government was not prepared to present the testimony of an essential prosecution witness when the first day of trial was recessed. We will affirm.

I.

The evidence adduced at trial shows the following. In the course of a Bridgeville, Delaware Police Department investigation of crack cocaine sales near an elementary school, Police Chief Handley J. Orr used a paid informant to make a "buy" of crack cocaine from appellant Smith. This transaction occurred on the sidewalk in front of the school, at a point only 4.49 feet beyond the school property boundary line. Smith was arrested two months later.

On the morning Smith's trial was to begin, it snowed heavily enough for the Delaware State Police to declare a weather emergency. By 11:00 AM the trial judge declared that, because of the bad weather, he would soon recess the trial until the following morning.

Before the trial actually recessed, Smith's attorney asked the judge to dismiss the case because one of the government's essential witnesses, Chief Orr, would not be able to testify before the recess. Indeed, Chief Orr was actually scheduled to testify in the afternoon. The trial judge denied Smith's motion.

When trial resumed the next day, Chief Orr was the first prosecution witness. He testified that on the night Smith sold crack cocaine to the police informant, he (Chief Orr) was inside the elementary school observing the informant "in front of the school . . . when [the informant] was approached by [Smith]." [App. 44] Chief Orr testified he had observed the informant and Smith

talking for several minutes "under the street light directly in front of me" and that "the defendant sat down on a curb and reached in his sock, pulled out something, and there was an exchange made." [App. 44] Then, Chief Orr pointed out on Government's Exhibit No. 2, a photograph of the front of the elementary school, exactly where Smith was on a sidewalk when the Chief observed the drug exchange [App. 45], and indicated specifically on the photograph the location of a telephone pole and street light which was "on the sidewalk" in front of the school. [App. 46] The Chief testified repeatedly that the defendant "was standing and sitting directly under the street light" when the criminal transaction took place. [App. 46-51] The Chief also testified that, after the crime, he identified for a surveying team at the school "the position the defendant was in when the transaction took place". [App. 53]

Charles D. Murphy, Jr., the professional land surveyor who employed the survey team which located Smith's crime, testified as an expert. Murphy said that his survey team had measured the distance of several locations from the school, locations which were identified specifically for the survey team by Chief Orr himself. Murphy said the Chief had "spent considerable time with [the team] identifying . . . certain locations, which were further delineated . . . by using spray paint. . . ." [App. 63] Surveyor Murphy testified that one spot identified by Chief Orr was only 4.49 feet from the school property's boundary line. Nevertheless, the surveyor also testified that Chief Orr told Murphy's employees that this particular point was the location of Smith's "alleged arrest". [App. 64]

At the close of the government's evidence, Smith's attorney made a motion for judgment of acquittal, arguing in part that "[t]here is no evidence in this record from the surveyor . . . as to the distance between the school property and where the alleged transaction took place. . . ." [App. 69] Smith's attorney argued that the surveyor's expert testimony focused on the location of

Smith's *arrest* rather than the location of his criminal conduct; and, therefore, the Government failed to prove an essential element of its case, namely that Smith's criminal act had occurred within 1000 feet of the school.

The district court denied Smith's motion for judgment of acquittal. Surveyor Murphy was called back to the stand and testified again. He said Chief Orr identified the points measured by the survey crew, and that with respect to the particular point measuring 4.49 feet from the school boundary, "I believe the delineation was that that was the site of the arrest." [App. 73] After Murphy's second testimony, the trial judge reaffirmed the denial of Smith's motion for judgment of acquittal. Smith testified in his own defense. The jury convicted Smith on both counts.

II.

Smith's first allegation of error is that the district court improperly denied Smith's motion for judgment of acquittal, because surveyor Murphy's expert testimony concerning the location 4.49 feet from the school's boundary went to the site of Smith's arrest, not his crime. Thus, Smith argues, the government failed to prove beyond a reasonable doubt that Smith's sale of crack cocaine occurred within 1,000 feet of the school. We disagree.[1]

---

1. We recognize that there is no indication in the record on appeal that Smith's attorney renewed Smith's motion for judgment of acquittal *after* putting Smith and other defense witnesses on the stand. If Smith did not renew his motion, he waived the right to contest its denial. *See United States v. Calderon,* 348 U.S. 160, 164 n1 (1954); *United States v. Trotter,* 529 F.2d 806, 809 (3d Cir. 1976). For purposes of our review, we will assume Smith did indeed renew his motion for judgment of acquittal. Accordingly, we will examine the sufficiency of the evidence upon the record as a whole to determine whether a rational trier of fact could have found that the evidence established each of the elements of Smith's offense beyond a reasonable doubt. *United States v. Feldman,* 425 F.2d 688, 692 (3d Cir. 1970).

But the record as a whole, including specific testimony described above, offers more than enough evidence upon which the jury could conclude that Smith's drug crime occurred within 1000 feet of the school. Although surveyor Murphy testified that Chief Orr told Murphy's secretary that the points measured near the school represented the location of Smith's arrest, all the other evidence in the case is consistent with the conclusion that the critical point measured by the surveyors and identified by Chief Orr was in fact the location of Smith's crime. The jury was free to discount surveyor Murphy's testimony concerning what Chief Orr told Murphy's employees about the location because Murphy's testimony was hearsay. The jury could rely instead on the great weight of other evidence (for example, Chief Orr's eyewitness account of the location of the crime, his unambiguous references to photographs, and the surveyors' technical measurement itself) to conclude that Smith's crime occurred less than five feet from school property. Thus, we hold the Government carried its burden of proving the location of Smith's crime was within 1,000 feet of the school, and therefore, it was not error to deny Smith's motion for judgment of acquittal.

Also, we reject appellant's argument that expert testimony *only* is competent to prove the distance between a drug crime and school property for purposes of 21 U.S.C. § 845a. Trial evidence as a whole may establish the critical distance requirement. Indeed, the cases appellant relies on belie his own argument. See *United States v. Watson,* 887 F.2d 980, 981 (9th Cir. 1989) (despite flaw in expert testimony, a *map* and other "*evidence as a whole* was more than enough for the jury to conclude that the measurements were sufficiently accurate to support a conclusion that the sale took place within 1,000 feet of the school") (emphasis added); *United States v. Brookins,* 919 F.2d 281, 284 (5th Cir. 1990) ("considerable evidence", including *FBI agents' testimony* concerning existence of elementary school

and its proximity to defendant's drug crimes, was sufficient to prove that drug crimes occurred within 1,000 feet of school).

III.

Smith's second allegation of error is that the trial court improperly denied his motion to dismiss when Chief Orr had not yet arrived to testify for the Government on the first day of trial which was recessed because of bad weather. Smith argues his rights under the Confrontation Clause of the Sixth Amendment of the Constitution have been violated. His argument is without merit and borders on frivolous.

The Confrontation Clause "reflects a preference for face-to face confrontation at trial", secures "the right of cross-examination", makes it more difficult for a witness to lie, and ensures that a witness will give his statements under oath. *Ohio v. Roberts,* 448 U.S. 56, 63-64 (1980). Its purpose is to ensure the integrity of criminal trial as a fact-finding process. *See id.,* at 64.

Under the Confrontation Clause, "the prosecution must either produce, or demonstrate the unavailability of, the declarant whose statement it wishes to use against the defendant." *Id.* at 65. Thus, the Government was under an obligation to either produce Chief Orr at Smith's trial, or to otherwise demonstrate his unavailability.

We must reject Smith's Confrontation Clause argument and the related allegation of error because Chief Orr did testify under oath at Smith's trial, and Smith did cross-examine the Chief and confront him face-to-face. The integrity of Smith's trial as a fact-finding process was not compromised by any absence of Chief Orr.

A defendant's Confrontation Clause right is satisfied when the defendant is permitted "the *opportunity* 'to expose to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the

witness.' " *United States v. Fortna,* 796 F.2d 724 (5th Cir. 1986) (citations omitted) (emphasis added). Smith had that opportunity with respect to Chief Orr. Smith admits as much: "Chief Orr was able to testify when the proceedings resumed on January 8, 1991" [Appellant's Brief at 13].

At best, Smith's Confrontation Clause argument poses a speculative allegation of fact: *if* trial had not been recessed at noon the first day, Chief Orr would not have been available to testify later that afternoon. This argument focuses on the Government's readiness to present Chief Orr at the time trial "was *scheduled* to proceed" rather than the time trial *actually occurred.* [Appellant's Brief at 14 (emphasis added)] Smith says, "Chief Orr's availability [the second day] and, consequently, the Government's ability to proceed with its case were due to the fortuity of the inclement weather conditions." *Id.*

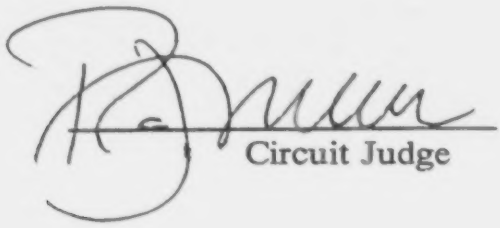
Smith's argument lacks merit because it supposes a defendant's Confrontation Clause right may be violated before a potential witness actually testifies or provides evidence at trial. That is not the law. *See United States v. Porter,* 764 F.2d 1, 9 (1st Cir. 1985), *rehearing denied* 776 F.2d 370, *appeal after remand,* 807 F.2d 21, *cert. denied,* 481 U.S. 1048 (____). Smith's Confrontation Clause rights *vis a vis* Chief Orr were not at issue *until the Chief actually testified against Smith,* which was the day after the district court denied Smith's motion to dismiss. Thus, the Confrontation Clause cannot be a basis for finding error in the district court's refusal to grant Smith's motion.

IV.

In summary, we reject all of appellant's contentions on appeal and will affirm.

TO THE CLERK:

Please file the foregoing memorandum opinion.



Circuit Judge

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 91-3256

UNITED STATES OF AMERICA

v.

CALVIN J. SMITH,

Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE
(D.C. Criminal No. 90-00090)
District Judge: Hon. Joseph J. Longobardi

Before: MANSMANN, NYGAARD and SEITZ,
Circuit Judges

JUDGMENT

This case came on to be heard on the record from the United States District Court for the District of Delaware and was submitted under Third Circuit Rule 12(6) on October 10, 1991.

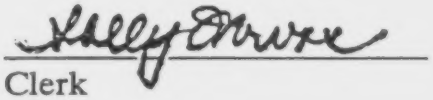
After considering the contentions raised by appellant, to-wit:

(1) whether the district court erred in denying Smith's motion for a directed verdict; and

(2) whether the district court erred in denying Smith's motion to dismiss; it is

ADJUDGED and ORDERED that the judgment of the district court be and is hereby AFFIRMED.

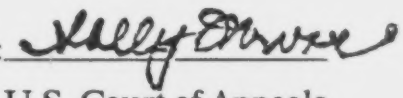
ATTEST:



Clerk

DATED: October 18, 1991

Certified as a true copy and issued in lieu of a formal mandate on November 12, 1991.

Attest: 

Clerk, U.S. Court of Appeals
for the Third Circuit.

APPENDIX C

AO 245 S (Rev. 4/90) Sheet 1 – Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

UNITED STATES OF AMERICA

v.

CALVIN J. SMITH
(Name of Defendant)

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: C.R. 90-90 LON

Francis J. Jones, Jr., Esq.
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____.
☒ was found guilty on count(s) I and II after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Court Number(s)
21/841(a)(1) & (b)(1)(C)	Distribution of crack; Sched. II cont. subst.	8/7/90	I
21/845a	Distribution of crack w/in 1000 ft. of school	8/7/90	II

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____, and is discharged as to such count(s).

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

☒ It is ordered that the defendant shall pay a special assessment of $50.00, for count(s) I and II, which shall be due ☐ immediately ☒ as follows: payable within thirty (30) days from release from custody.

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. NO FINE IS IMPOSED

Defendant's Soc. Sec. No.: 221-50-4545

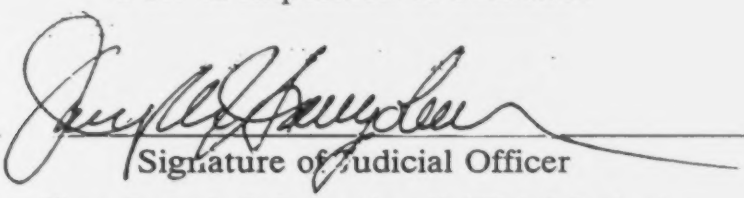
Defendant's Date of Birth: 4/4/67

Defendant's Mailing Address:
Rt. 2, Box 67-A
Bridgeville, DE

Defendant's Residence Address:
SEE ABOVE

April 24, 1991

Date of Imposition of Sentence



Signature of Judicial Officer

Hon. Joseph J. Longobardi (Chief Judge)

Name & Title of Judicial Officer

APRIL 24, 1991

Date

judg. card filed 4/24/91 – dmd

*U.S. GPO: 1990-722-448/10286

AO 245 S (Rev. 4/90) Sheet 2 – Imprisonment

Defendant: CALVIN J. SMITH
Case Number: CR 90-90 LON

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of eighteen (18) months.

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States marshal.

☐ The defendant shall surrender to the United States marshal for this district,

a.m.

☐ at_____p.m. on_____.

☐ as notified by the United States marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons,

☒ before 2 p.m. on May 8, 1991.

☒ as notified by the United States marshal.

☐ as notified by the probation office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

Defendant delivered on_____to _____at _____, with a certified copy of this judgment.

_____

United States Marshal

By_____

Deputy Marshal

*U.S. GPO: 1990-722-448/10286

Defendant: CALVIN J. SMITH
Case Number: CR 90-90 LON

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of six (6) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

☒ The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

☐ The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

☒ The defendant shall not possess a firearm or destructive device.

☐ Defendant participate in a program of testing and treatment for drug abuse, as directed by the probation officer, until such time as the Defendant is released from the program by the probation officer. Positive results from any such tests, or failure to submit to said testing, shall constitute a violation of supervised release.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

*U.S. GPO: 1990-722-448/10286

AO 245 S (Rev. 4/90) Sheet 7 – Statement of Reasons

Judgment—Page 4 of 4

Defendant: CALVIN SMITH
Case Number: 90-90 LON

STATEMENT OF REASONS

☐ The court adopts the factual findings and guideline application in the presentence report.

OR

☒ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary): that the Court finds that there is not enough evidence, based on trial testimony, to find that the defendant obstructed justice.

Guideline Range Determined by the Court:

Total Offense Level: 14

Criminal History Category: I

Imprisonment Range: 15 to 21 months

Supervised Release Range: ____ to
6 years mandatory

Fine Range: $4,000 to $2,000,000

☒ Fine is waived or is below the guideline range, because of the defendant's inability to pay.

Restitution: $0

☐ Full restitution is not ordered for the following reason(s):

☒ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

OR

☐ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

The sentence departs from the guideline range

☐ upon motion of the government, as a result of defendant's substantial assistance.

☐ for the following reasons(s):

*U.S. GPO: 1990-722-448/10286